

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2330 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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GUJ STATE ROAD TRANSPORT CORPORATION

Versus

JAMNADAS GANGJIBHAI KHANT  
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Appearance:

MR HARDIK C RAWAL for Petitioner  
MR MUKESH H RATHOD for Respondent No. 1  
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/06/2000

ORAL JUDGEMENT

1. This petition under Article 227 of the Constitution of India is preferred by the petitioner Gujarat State Road Transport Corporation (hereinafter referred to as the "Corporation" ) challenging the legality, validity and propriety of the impugned award

dated 1.7.1986 passed by the Presiding Officer, Labour Court, Rajkot in Ref.(LCR) No. 65/85 whereby the Corporation is ordered to reinstate the respondent workman Jamnadas Gangjibhai Khant on his original post in the initial scale of the conductor without back wages. It was further observed that in case of default, the respondent workman will be entitled to full back wages from the date of default till reinstatement.

2. Heard learned counsel Mr. Hardik Raval for the petitioner Corporation and learned counsel Mr. Prabhakar Upadhyay for the respondent workman. It is submitted by Mr. Raval that the petitioner is a Statutory Corporation and is running transport buses althroughout Gujarat as well as to the other parts of the country. Respondent workman is the employee of the Corporation and at the relevant time was serving as a Bus Conductor. It is the say of the Corporation that when respondent was on duty as a Bus Conductor, he tried to misappropriate the amount of bus fare collected by him from 38 passengers when bus was checked by the Checking Squad of the Corporation. Bus was carried by the respondent conductor on Satapur-Jamjodhpur route and bus was checked at the last stoppage at Jamjodhpur. It was noticed when bus was checked that bus was loaded with more than 100 passengers and 42 passengers were without ticket and out of aforesaid 42 passengers, 38 passengers have already paid amount of fare to the respondent conductor. According to the petitioner Corporation, after inquiry, respondent was dismissed from service in the month of April-1984. Appeal was preferred by the respondent before the authority constituted by the petitioner Board and the said appeal was also dismissed. Thereupon, respondent workman invoked jurisdiction of the Labour Court, Rajkot under the provisions of the Industrial Disputes Act, 1947 by filing Reference (LCR) No. 65/85, wherein, the Labour Court passed impugned award. While passing impugned order, Reference Court has held that the inquiry conducted against the respondent was legal, valid and all reasonable opportunities were given to the respondent. In spite of this, instead of confirming the penalty imposed on the respondent, the same was reduced by the Labour Court vide impugned award. I would like to reproduce the final order passed by the Labour Court in the impugned award which reads as under:-

" Gujarat State Road Transport Corporation  
is ordered to reinstate the workman Jamnadas Gangjibhai Khant to his original post in the initial scale of the conductor without back wages within one month from the date of publication of

the award. In case of default the workman will be entitled to full back wages from the date of default till reinstatement.

Gujarat State Road Transport Corporation

is ordered to pay costs of Rs. 250/ to the workman."

3. Above order clearly reveals that the order of reinstatement passed by the Labour Court is subject to two major conditions; (i) without back wages, and (ii) reinstatement of the respondent would be in initial scale of Conductor. Thus, by imposition of these two conditions, the respondent conductor not only lost his seniority, but has to join service in the initial scale and thus, financial loss to the respondent would be much larger and would be for all times to come. Award passed by the labour Court is dated 1.7.86 and after a lapse of about three years, respondent came to be reinstated without any back wages. I agree that the respondent was previously indulged in three cases where his behaviour can be termed as misconduct within the meaning of relevant conditions of service. The grievance of the Corporation is that this is for the fourth time that respondent is involved in a misconduct relating to dishonesty and, therefore, labour Court ought not to have disturbed the penalty imposed by the disciplinary authority. Learned counsel Mr. Raval appearing for the Corporation has taken me through relevant paras of the papers of inquiry exh.18 which were considered by the Labour Court and statement of the delinquent- respondent herein. Considering the reasons given by the Labour Court while passing impugned award, in my view, it can be said that the same are convincing, proper and just. The labour Court has rightly and properly exercised its discretion. It is not a matter of dispute that when bus was checked, the same was overflooded or loaded with passenger, they were about more than 100. It is also not a matter of dispute that 42 passengers were found without ticket and it is alleged that out of 42 passengers found without ticket, 38 passengers had paid amount of fare to the respondent Conductor. It can be legitimately argued that as some of the passengers were compelled to pay ten times penalty of the fare payable, 38 passengers may state that amount of fare was given to the delinquent conductor. We agree that this specific plea is not taken by the respondent conductor, but while appreciating the legality and propriety of the order passed by the Labour Court under challenge, this Court has to appreciate the totality of the circumstances of each case. It is pertinent to note that four passengers who were found without ticket and had not paid amount of fare to the

conductor, were charged 10 times penalty and receipts to that effect were given to them. It is also important to note that even if it was a full capacity bus, than about 55 to 60 passengers could have been accommodated in the bus. However, in this case, when bus was checked, it was flooded with more than 100 passengers and, therefore, this can be said to be grave misconduct committed on the part of respondent conductor by permitting such large number of passengers to travel. Delinquent conductor is not charged for permitting excess number of passengers in the bus. It is not a matter of dispute that bus was about to reach the destination. Bus checked was undisputedly a local bus and some of the passengers might be on the roof top of the bus. So, interference by the Labour Court as to the nature of punishment inflicted by the appellant Corporation, cannot be said to a jurisdictional error. The doubt as to the honesty and integrity of the delinquent conductor by the appellant Corporation, in light of above said facts, is properly taken care of. The finding of the Labour Court that inquiry was as per rules and same was legal and valid, would not strengthen the case of the Corporation only to get dismissal and success of this petition. The crucial question before this Court is whether the discretion exercised by the Labour Court in reference case requires interference by this Court in exercise of powers under Article 227 of the Constitution of India or not ? The answer, obviously, is no. The order passed by the Labour Court is just and based on sound reasoning. The order may have some flavour of sympathy, even then it would not be proper to hold that the same is misconceived or is illegal warranting interference by this Court. It also cannot be said that sympathy shown by the Labour Court is misplaced sympathy or Labour Court has shown much more grace. As observed earlier, penalty imposed by the Labour Court while ordering reinstatement, are sufficient to cause huge financial loss to the respondent conductor for all times to come and he had to loose three years' seniority and other benefits and was required to join duties as a conductor in a initial scale of conductor. Of course, the order is subject to the result of this petition, but after a long lapse of about 17 years, it would not be just and proper to uphold order of dismissal passed by the disciplinary authority and to throw the respondent back to long uncertainty. There is nothing before this court on the basis of which it can be inferred that the respondent had not improved himself even after alleged incident or has indulged in such or similar types of misconduct. Considering the time gap between the date of reinstatement and disposal of this petition, it will be highly prejudicial and malevolent to

the respondent if he the order of dismissal is upheld.

4. For the reasons aforesaid, there is no substance in this petition and the same is dismissed. Rule is discharged. In the facts and circumstances of the case, no order as to costs.

23.6.2000 [ C.K.BUCH, J]

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